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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.741 of 2005

[Against the judgment of conviction dated 19.10.2005 and order of sentence dated 21.10.2005 passed by Sri Rama Nand Sharma, learned 6th Additional Sessions Judge, Patna in Sessions Trial No. 105 of 2003]

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1.Ajit Singh son of Shiv Nath Singh
2. Shiv Nath Singh, son of Late Bulaki Singh,
Both residents of village: Gorakhari, P.S. Bikram, District- Patna.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :
For the Appellant Ajit Singh
: Mr. Kanhaiya Prasad Singh, Sr. Adv.
: Mr. Ashok Kumar Sinha, Adv.
For the appellant Shiv Nath Singh
: Mr. Neeraj Kumar @ Sanidh (Adv.)
For the informant : Mr. Rama Kant Sharma, Sr. Adv.
: Md Helal Ahmad, Adv.
:. Md. Anjum Akhtar, Adv.
For the State : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA
and
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL)
Date: 08-10-2012

This appeal has been preferred by the appellant Ajit Singh and his father Shiv Nath Singh against the judgment of conviction dated 19.10.2005 and order of sentence dated 21.10.2005 passed by the learned 6th Additional Sessions Judge, Patna in Sessions Trial No. 105 of 2003 by which the appellant no. 1 Ajit Singh has been convicted and sentenced to

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imprisonment for life under Section 302 of the Indian Penal Code (hereinafter referred to as IPC) and further sentenced to rigorous imprisonment for three years under Section 27 of the Arms Act. Both the sentences of Ajit Singh have been ordered to run concurrently. The appellant no. 2 Shiv Nath Singh has been convicted under Section 302/34 IPC and sentenced to rigorous imprisonment for life.

2. According to fard beyan (Ext. 1) of the informant Umeshwar Prasad Sharma (P.W. 4) the prosecution case is that on 18.6.2000 at about 6.30 p.m. his nephew Shriram Singh (deceased) and he had gone to purchase cell of torch from a shop of the village. While they were returning to their house, near the Dalan of Nunu Singh Ajit Singh (appellant no. 1), Niraj Singh, Gajendra Singh (both absconding), and Shivnath Singh (appellant no. 2) surrounded his nephew Sriram Singh, Niraj Singh and Gajendra Singh caught hold of him. In the meantime Shivnath Sigh instigated to shoot him. Thereafter, Ajit Singh shot fire at Sriram Singh which hit in his chest and he succumbed to the injuries there. The inmates of his house and the villagers rushed there and all the accused escaped making firing. This occurrence was witnessed by Deopari Devi (P.W. 2), wife of informant,

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Dharmendra Kumar (P.W. 1), Manoj Kumar (P.W.3) and others. It has been further alleged that Ajit Singh is a notorious criminal and there are dozens of cases pending against him. He has been released from jail on bail recently. The reason for occurrence is that in the year 1995 accused persons had demanded ransom from the members of his house for which the informant lodged Bikram P. S. Case no. 110 of 1995, 238 of 1996, and 279 of 1996 against Ajit Singh. Informant and others have also deposed in those cases. This fard beyan was witnessed by Dharmendra Kumar (P.W. 1), Manoj Kumar (P.W. 3) and Ram Binay Singh (P.W. 8).

3. On the basis of this Fard Beyan Bikram P. S. Case No. 108 of 2000 was instituted against the appellants, Niraj Singh and Gajendra Singh under Section 302 IPC and 27 of the Arms Act. After investigation charge-sheet was submitted against all the co-accused. The two accused Gajendra Singh and Niraj Singh are absconders. Charge under Section 302/34 IPC and 27 of the Arms Act was framed against the appellant no.1 Ajit Singh and charge under Section 302/34 IPC was framed against appellant no. 2 Shivnath Singh. Both of them denied the charge and claimed to be tried. The trial proceeded after trial both the appellants have been

convicted and sentenced as aforesaid.

4. The defence of the accused is total denial of the prosecution case and they have been falsely implicated in this case due to previous grudge and enmity. It is also said that the prosecution as well as defence party are descendants of their common ancestor Bhulaki Singh and as yet no partition by metes and bounds have taken place. The residential house at Thakurbari Road patna is still joint between both the parties and in order to grab the same the accused have been falsely implicated in this case.

5. This Court is required to reappraise the evidence and to consider as to whether the prosecution has been able to substantiate its charge beyond shadow of all reasonable doubts or not.

6. The prosecution has examined following witnesses in support of its charge:- P. W. 1 Dharmendra Kumar, brother of the deceased, P. W. 2 Deopari Devi, wife of the informant, P. W. 3 Manoj Kumar, brother of the deceased, P. W. 4 Umeshwar Prasad Sharma, the informant and the uncle of the deceased, P. W. 5 Dr Arun Kumar who has held autopsy on the dead body of deceased Sri Ram Singh, P. W. 6 Bihari Singh is Investigating Officer, P. W. 7 Lal Bahadur

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Ram is also Investigating Officer, P. W. 8 is Ram Binay Singh, P. W. 9 Shiv Narayan Paswan is Chaukidar and P. W. 10 Gulbadan Sigh is a constable. No defence witness has been examined.

7. P. W. 1 has stated that on 18.6.2000 at about 6 p.m. his uncle Umeshwar Prasad Sharma (P.W. 4) and his brother Sriram Sharma (deceased) were returning after purchasing cell. In the meantime, Niraj Singh and Gajendra Singh caught hold of Sri Ram Singh. Shivnath Singh instigated to shoot Sri Ram Singh, thereafter, Ajit Singh shot fire at Sriram Singh. His uncle raised alarm by that time all the accused escaped after making firing. He has further stated that in 1995 Ajit Singh demanded Rs.20,000/- as ransom. Ransom money was not paid and a case was instituted against him. After the occurrence Sriram was taken to Vikram Hospital where the doctor declared him dead. He has identified both the appellants. In his cross-examination, he has stated that his grandfather had two wives. From his first wife Shivnath Singh is the issue and from his second wife there are two sons, namely, Krishna Murari Singh and Umeshwar Prasad Singh (P. W. 1). He has also stated that he has seen the occurrence. The defence has failed to demolish his evidence.

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8. P. W. 2 Deopari Devi has also supported the prosecution case as P.W. 1. She has stated that she was at a distance of 50 steps from the place of occurrence and saw that Niraj Singh and Gajendra Singh caught hold of Sriram. Her husband raised alarm. Dharmendra (P. W. 1) and Ram Binay (P.W. 8) went near the place of occurrence. Shivnath Singh asked to shoot. Thereafter, Ajit shot fire at Sriram Singh. After firing all the accused escaped. Sriram Singh fell down and he was taken to Vikram Hospital on a cot by her husband (P. W. 4), Dharmendra (P.W. 1), Ram Binay (P.W. 8) and Manoj (P. W. 3). She has further stated that in the year 1995 there was a dacoity in the house of Kamkhaya Singh. Ajit Singh was the accused and Vijay Singh was a witness. Ajit Singh killed Vijay Singh. After committing murder Ajit Singh demanded Rs.20,000/- from her husband failing which he would also kill him. Thereafter, her husband lodged a case against the accused. The accused had also cut neem tree and had also shot fire on the worker of the prosecution party for which the case was also lodged. One week prior to the occurrence the accused person threatened the prosecution party to remove Sriram Singh who was working as a bodyguard. Sri Ram Singh succumbed to his injury while he was taken to the hospital.

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This witness has been cross-examined at great length but the defence has failed to shake her evidence.

9. P. W. 3 has also supported the prosecution case as an eye witness like P.W. 1 and P. W. 2.

10. P. W. 4 is the informant of this case and he has stated that the occurrence took place in front of Dalan of Nunu Singh. Sriram Singh was caught hold by Neeraj Singh and Gajendra Singh. He and Sriram Singh raised alarm. His wife Deopari Devi (P.W. 2), Dharmendra (P.W. 1), Manoj (P.W. 3), Ram Binay (P.W. 8) reached there. They were at a distance of 10 steps. Shivnath Singh asked to kill, thereafter, Ajit Singh shot fire at Sriram Singh which hit in his chest. After making firing all the accused escaped. The injured was taken to Vikram Hospital where the doctor declared him dead. His statement was recorded by the police officer. He has identified his signature on the fard beyan (Ext. 1). The inquest report was prepared on the next date. The dead body was sent to PMCH for post-mortem. He has also stated that in the year 1994 there was a dacoity in the house of Kamakhya Singh in which licensee gun was looted. Vijay Singh was Pairvikar in that case. He was killed on 22.4.1995. Ajit Singh was an accused in that case. Vijay Singh was also killed by Ajit Singh. His

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mother came to him to get his name deleted when he refused to make pairvi, Ajit Singh demanded Rs.20,000/- as Rangdari which was refused by him. Thereafter, Ajit Singh tried to kill him and his son for which he had filed a case. In his cross-examination he has stated that his father had performed two marriages. Nunu Babu and Adhiram Babu are his agnates but they are also against him as his father had made two marriages and the second marriage was intercaste marriage as such the agnates had discarded his family. He has been cross-examined at length but the defence has failed to demolish his evidence.

11. P. W. 5 while posted as Assistant Professor in the department of Forensic Medicine, PMCH, Patna held the autopsy on 19.6.2000 at 11.15 a.m. on the dead body of Sri Ram Singh aged about 19 years and found the following ante-mortem injuries:-

(1) one entry wound of 1 ½" x ¾" on front of chest in middle, 8" above from umbilicus and 4" below and medial from left and right nipple. Margin lacerated, inverted and blackened, tattoo mark present in 10"x10" area surrounding the entry wound.

On dissection blood was found in the chest cavity. Pericardium, right side of heart and right lung was found

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lacerated. Xiphoid process was found fractured. 10th ribs was found fractured on right side of back of chest. One (1) metallic bullet was found embedded in muscle on right side of back of chest near 10th rib. Stomach contained 100 gram semi-digested food material. In general all viscera was found pale. Time elapsed since death 12 to 24 hours. In his opinion the deceased died due to abovementioned injuries caused by firearm. Post-mortem report has been marked as Ext. 2.

12. P. W. 6 Bihari Singh is Investigating Officer. He has only submitted charge-sheet. Prior to taking over the charge the investigation was complete. He has proved formal FIR (Ext. 3) and fard beyan (Ext. 1/1).

13. P.W. 7 is also the Investigating Officer. He has proved the formal FIR (Ext. 4). He has stated that formal FIR and the fard beyan (Ext 5) were recorded by the Police Officer Mundrika Prasad. Inquest report was also prepared by him. He took the reinstatement of the informant, inspected the place of occurrence just in the lane of Kacchi Road in village Gorakhari in front of the house of Nunu Singh. He has found the blood stains there. He also took the statement of other witnesses. He has also stated that he did not take the statement of any members of the family of Nunu Singh as they were not

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ready to give him any statement regarding the occurrence. He has also proved the inquest report and the dead body challan as Ext. 7 and 8 respectively. He has also stated that a bullet recovered from the dead body of the deceased was handed over to him by the constable which was found by the doctor holding post-mortem examination. It was kept in sealed vial which has been marked as material Ext. 1. The bullet was taken out from the sealed vial and it has been marked as Material Ext. 2.

14. P.W. 8 has not supported the prosecution case and he has been declared hostile. He has also stated that the police has not taken his statement.

15. P. W. 9 is Chaukidhar and he has stated that Sri Ram Singh was killed and he had taken his dead body to PMCH. He had also identified his dead body.

16. P. W. 10 is a constable who has taken the dead body of Sri Ram Singh to PMCH with Chaukidar. The doctor gave him a sealed bullet which was given to the officer-in-charge.

17. Following are the exhibits on behalf of the prosecution:-

Ext. 1 Signature fardbeyan Umeshwar Pd. Sharma

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Ext. 2 P. M. Report

Ext. 1/1 fardbeyan

Ext. 3 FIR

Ext. 4 formal FIR written by Mundrika Prasad.

Ext. 5 fardbeyan written by Mundraka Prasad.

Ext. 6 Signatue on application to S. P. of Ramvinay Singh

Ext. 6/1 signature on fardbeyan of Ram Binay Singh

Ext. 7 Post-mortem report

Ext. 8 dead body challan

Material Ext. 1. Sealed Shishi

Material Ext. II Bullet.

18. Learned counsel for the appellants has submitted that all the ocular witnesses are interested and they are relatives of the deceased and they are also of the same family. He has further submitted that it appears from the prosecution evidence that Shivnath Singh, the father of the appellant had no intention to kill the deceased. No witness has stated that the appellant Shivnath Singh has committed any overtact in furtherance of common intention and as such there is no evidence to show vicarious liability against the accused

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Shivnath Sigh. It is gathered from the evidence that Ajit Singh had enmity with the informant and there was also criminal case between both of them. Shivnath Singh (appellant no. 2) is aged about 85 years and he has not participated in the occurrence.

19. Learned counsel for the State has submitted that there is sufficient material to show that Ajit Singh has committed murder of Sri Ram Singh. Shivnath Singh had instigated his son Ajit Singh to kill the deceased as such no interference is required in the impugned judgment.

20. A counter affidavit has been filed on behalf of the informant Umeshwar Prasad Sharma (P.W. 4) that even after conviction and sentence for life, the appellant Ajit Singh absconded from judicial custody of police on 14.8.2006 while he was brought to the court for production in Sessions Trial No. 889 of 2006 under Section 302 IPC arising out of Pirbahore P. S. Case No. 244 of 2006 and he was arrested by the joint effort of Sahpur Police Station and Bikram Police Station on 1.3.2011. It has further been stated that the appellant Ajit Singh has criminal antecedent and he is involved in 18 following cases:-

(i) Bikram P. S. Case No. 110/95 dated 24.4.95

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under Section 384 Evidence concluded by the trial court.

(ii) Bikram P. S. Case No. 164/94 dated 2.10.04 under Section 394,395.

(iii) Bikram P. S. Case No. 238/96 dated 3.10.04 under Section 379, 384 and 27Arms Act, trial is going on.

(iv) Bikram P. S. Case No. 279/96 dated 25.11.96 under Section 307, 384 and 387 I.P.C.

(v) Bikram P. S. Case No. 30/95 dated 7.2.95 under Section 307, 34 I.P.C. and 27 Arms Act.

(vi) Bikram P. S. Case No. 98/95 dated 2.4.95 under Section 302/34 I.P.C. and 27 Arms Act.

(vii) Bikram P. S. Case No. 99/95 dated 24.4.95 under Section 307, 34 IPC and 27 Arms Act.

(viii) Bikram P. S. Case No. 29/96 dated 30.1.96 under Section 448,307,379,384,34 IPC and 27 Arms Act.

(ix) Bikram P. S. Case No. 162/2003 dated 31.4.2003 under Section 147, 341, 427, 447, 307, 504 I.P.C. and 27 Arms Act.

(x) Bihta P. S. Case No. 69/97 dated 6.4.98 under Section 307, 553, 414 and 27 Arms Act.

(xi) Bikram P. S. Case No. 42/2002 dated 10.6.2002 under Section 376, 307 IPC and 27 Arms Act.

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(xii) Bikram P. S. Case No. 108/2000 dated 18.6.2002 under Section 302/34 IPC and 27 Arms Act.

(xiii) Bikram P. S. Case No. 63/97 under Section 392, 441 I.P.C.

(xiv) Bikram P. S. Case No.4/98 dated 6.1.98 under Section 307, 447, 504, 34 IPC and 27 Arms Act.

(xv) Bikram P. S. Case No.189/94 dated 25.7.94 (C) 25(1) (B) 26,35 Arms Act.

(xvi) Pirbahore 244/06 dated 14.8.06 under Section 224 IPC.

(xvii) Pirbahaore Case No. 222/07 dated 24.8.07 under Section 387 I.P.C.

(xviii) Bikram P. S. Case No. 276/07 dated 11.12.07 under Section 448, 352, 307, 34 IPC explosive 27 Arms Act.

A copy of this counter affidavit has been received by learned counsel for the appellants but the facts stated above have not been denied.

21. After hearing learned counsel for both the parties and on perusal of the evidence it appears that P. Ws. 1, 2, 3 and 4 have supported the prosecution case. No doubt, they are brothers, aunt and uncle of the deceased but their evidence is quite natural and convincing. The evidence of eye witnesses

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cannot be discarded on the ground that they are interested witness. It is settled principle of law that their evidence is required to be scrutinized carefully. On careful consideration of the evidence of these witnesses it appears that their evidence is quite natural and convincing. Their evidence stands corroborated by the medical evidence of P. W. 5, Dr. Arun Kumar Singh, who has held the post-mortem examination and has found firearm injury which has caused the death of the deceased. The prosecution has been able to explain that the grandfather of the deceased had two wives. The accused are descendants of first wife and the prosecution party are the descendants of second wife of the common ancestor Bulaki Singh. Since the second marriage of Bulaki Singh was inter-caste, his agnates and near relatives had boycotted the descendants of Bulaki Singh from his second wife i.e. the prosecution party, as such they have not come to depose in favour of the prosecution case.

22. It appears from the prosecution evidence that Shivnath Singh (appellant no. 2) has not committed any overtact nor he has participated in the commission of the offence. Common intention is a state of mind of accused which can be inferred objectively from his conduct displayed

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in the course of commission of crime as also prior and subsequent attended circumstances. Mere participation in the crime with others is not sufficient to contribute common intention to one of others involved in the crime. The substantive element in common intention, therefore, should be proved by objective test. It is only then that one accused can be made vicariously liable for the acts and deeds of other co-accused. Reference may be made to a decision in the case of ***Harjit Singh vs. State of Punjab***, reported in ***2000 SCC (Cri.) 1518***.

23. Considering the facts and circumstances stated above, we find that the prosecution has not been able to substantiate its charge for the offence punishable under Section 302/34 IPC against Shiv Nath Singh (appellant no. 2). The judgment of conviction and sentence of Shiv Nath Singh is fit to be set aside. Accordingly, his judgment of conviction and sentence is set aside. He is acquitted from the charge and also discharged from the liability of his bail bond.

24. It appears that the prosecution has been able to substantiate its charge for the offence punishable under Section 302 IPC and 27 of the Arms Act against Ajit Singh (appellant no. 1) who is a veteran criminal and he is involved

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in a number of cases (18). Although this fact has been brought to the notice of by the informant but this fact has not been denied by the learned counsel for the appellant.

25. Considering the facts and circumstances, a sentence of 14 years or 20 years as referred to in the guidelines laid down by the State under jail manual would be totally inadequate. The life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. The principles for sentence has been considered in several cases and it has also been considered in the case of ***State of U. P. vs. Sanjay Kumar***, reported in ***(2012) 8 Supreme Court Cases 537***. The principle of sentencing has been dealt with from paragraph 21 to 24 of the aforesaid judgment. It is better to quote paragraph 24 of the aforesaid judgment:-

> *"24. ……. The life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds, for example, non-application of mind while passing the order; non-consideration of relevant material; or if the*

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order suffers from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labeled as unwarranted. The aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under the Jail Manual, etc. or even under Section 433-A CrPC."

26. In view of above discussion, we do not find any ground to interfere with the conviction and sentence of appellant no. 1 Ajit Singh. Accordingly, his appeal is dismissed.

(Shyam Kishore Sharma, J)

(Amaresh Kumar Lal, J)

A. F. R/Kanchan